IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 6847 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BABUBHAI SHANTILAL SHAH

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 6847 of 2000

MR RJ GOSWAMI for Petitioner No. 1-2

MR PR ABICHANDANI, APP for Respondent No. 1

MR KJ SHETHNA for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 26/12/2003

ORAL JUDGEMENT

1. This application is filed under Section 482 of the Code of Criminal Procedure (for short ' Cr.P.C.') for seeking appropriate relief regarding quashing the proceedings of Criminal Case No. 2051 of 1997 pending on the file of the Ld. Judicial Magistrate First Class, 1st Court at Surat. The said complaint is filed against the present petitioners and other accused for alleged commission of offences made punishable under Sections 499, 500 read with sec. 114 of the Indian Penal Code (for short 'IPC'). Petitioner no. 1 is original accused no. 2, who is stated to be the owner of a well-known daily, namely Gujarat Samachar and petitioner no. 2 original accused no. 3, is the Editor of the said daily.

2. The allegations against the petitioners and original accused appears to be that they had in conspiracy with each other published in the aforesaid newspaper an advertisement perpetuating to be reply to the aforesaid public notice given by the complainant i.e. respondent no.2 dated 6th March, 1997 in daily known as "Gujarat Mitra". The said reply which was published in "Gujarat Samachar" dated 8th March, 1997 under the captioned as per annexure-D.
[in Gujarati]
"
According to respondent no.2 the said publication contained defamatory statements which lowered down his reputation in the Society. It is further alleged in the complaint that these statements were published in the aforesaid newspaper at the instance of accused no.1 namely Pravinbhai Poonamchand Rupawala a partner of Deep Builders. It is also alleged that such publication was done with a calculative move to harm the reputation of complainant and to lower down his prestige in the Society. It is further alleged that these statements were published in the newspaper at the instance of one Pravinbhai Poonamchand Rupawala i.e. partner of accused no. 1. The alleged defamatory statements have been adequately described in the complaint. According to the complainant, since the publication of the defamatory statements was intentionally done, the accused had committed offences punishable under sections 499, 500 read with sec. 114 of the IPC. The Ld. Magistrate has issued process against all the accused including the present petitioners for the aforesaid offences.

3. It has been submitted by Mr. S.V. Raju, learned advocate for the petitioners that no case or offence is made out in this complaint under section 500 read with section 114 of the IPC and the complaint is required to be quashed. He has further submitted that when the

complainant has compounded the matter with main accused i.e. accused no. 1, there is no point in permitting the trial to continue against rest of the accused and in particular the present petitioners. He has submitted that it is accused no. 1 at whose instance the aforesaid publication was made in the concerned newspaper. However, when the matter is settled with him by the complainant, it would be travesty of justice to proceed against the petitioners and other accused. Lastly, he has submitted that the publication has been made at Surat, where the local Editor is there to look after the publication of the said newspaper from Surat. The petitioners are stationed at Ahmedabad and, therefore, they are not responsible for the alleged defamatory publication. He has, therefore, submitted that the present complaint be quashed and set aside.

3.1. As against that, Mr. K.J. Shethna, learned advocate for respondent no. 2 has submitted that the contents of the complaint disclose the commission of offence u/S. 500 read with sec. 114 of the IPC by the present petitioners. It also shows that the statements which have been published in the said newspaper against the complainant are per se defamatory and since they have been intentionally made by the petitioners and other original accused, they are required to be tried and even convicted for the said offences. Mr. P.R. Abichandani, Ld. APP for respondent no. 1 has supported the say of the complainant.

4. Having carefully gone through the record of this application and having considered the rival submissions, it appears that respondent no. 2 has filed a complaint on the ground of he being deliberately defamed by the accused. He has set-out in the complaint in detail the defamatory statements. It also appears that the complainant has settled the matter with accused no. 1, at whose instance the publication was made. However, if the concerned statements are carefully read prima-facie, they appear to be the defamatory in nature. Further that these statements have been published in the newspaper having very wide circulation, meaning thereby that it was made with an intention to lower down the prestige of respondent no. 2 in the society at large. The submission of Mr. Raju that prima-facie there is no offence made out cannot be accepted for the aforesaid reasons. When the deliberate defamatory statements are made with a view to harm the reputation of the concerned person, naturally prima-facie offence u/S. 500 read with sec. 114 of the IPC is committed.

4.1. The second submission that when the compromise has been arrived at by the complainant with main accused i.e. accused no. 1, trial cannot proceed against the present petitioners, also cannot be accepted because each accused is to be dealt with on the basis of the allegations levelled against him. It is clear from the record of this application including the complaint that the defamatory statements have been published in the newspaper and this newspaper has wide circulation. The responsibility for publication of any material or matter in the newspaper is that of the Editor and the owner of the newspaper. They ought to be careful while making such publication that whether the publication would tend to harm the reputation of a particular person or persons in the society and if it is not covered in any of the exceptions under Section 499 of th Indian Penal Code, it by itself will constitute an offence u/S. 500 of the IPC. Even if the complainant settled the matter with the person at whose instance such a publication is made and the proceedings against him are dropped, the publication of such defamatory material in the newspaper itself is an offence and the trial against persons responsible for such publication can continue. There is no need to quash the complaint against them also. It may be noted here that so far in the present case, it appears that complainant has settled the matter with accused no. 1. However, that would not absolve the petitioners from their prima-facie liability of committing offence u/S. 500 of the IPC. It is quite obvious that accused no. 1 has some purpose for making such defamatory statements against complainant. However, for some reason or the other he could settle the matter with the complainant. So far the petitioners are concerned, they had published such defamatory item in the course of business. They ought to have been careful enough before publishing such writing. The settlement between complainant and accused no. 1, therefore, will not be of any help to the present petitioners.

4.2. So far the submission with regard to the petitioners being not local persons or responsible for such publication cannot be accepted because petitioner no. 1 is the owner; whereas the petitioner no. 2 is the Editor. It is a well settled law by now that for publication of any defamatory item in the newspaper, the prime responsibility will be that of the owner as well as the Chief Editor of the newspaper. Thus, when prima-facie case is against the petitioners, there is no need for this Court to invoke powers u/S. 482 of the Cr.P.C. to quash the proceedings of the aforesaid case.

5. In view of the above, the petition has, therefore, no merit and it is dismissed. Rule discharged. Interim relief stands vacated.

[AKSHAY H. MEHTA, J.]

* Pansala.